



April 8, 2009

**VIA USPS**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
9300 East Hampton Drive  
Capitol Heights, Maryland 20743

**RE:** The Beaufort County School District's Request for Waiver of the Rule Requiring that a Service Substitution Request Must Be Submitted Prior to the Installation Deadline  
**BEN: 127258**  
Funding Year: 2006-2007 Form 471 Application Number-**507686** for Funding Requests **1401458** and **1401474**  
**CC Docket No. 02-6**

**REQUEST FOR WAIVER**

By this letter, the Beaufort County School District ("BCSD" or the "District") respectfully requests that the Federal Communications Commission ("FCC") waive the rule that requires a service substitution must be received or postmarked by the last day to receive service for that Funding Request. In support of its request for waiver, the District states as follows:

**I. SLD Decision for Which a Waiver of the Applicable Rule is requested**

In the decision letters issued by the Schools and Libraries Division ("SLD") of the Universal Service Administration Company ("USAC"), for the above captioned matter (See Exhibit A), the SLD rejected the Service Substitution Request for Funding Year 2006 because "the Service Substitution Requests for both FRNs were not received or postmarked by the last day to receive service for these FRNs."

**II. Background Information**

The E-rate eligible project in the above captioned matter concerns the installation of cabling for the connectivity of voice, video and/or data. The submitted funding requests and subsequent commitments specified that CAT 6 type cable and associated jacks were approved for installation. The District made

MICHAEL F. BRANDAU  
E-RATE MANAGER

POST OFFICE DRAWER 309  
1300 KING STREET  
BEAUFORT, SOUTH CAROLINA  
29901-0309

TELEPHONE  
843•322•2340  
1•800•763•1875

FAX  
843•322• 2424

EMAIL  
mfb7999@beaufort.k12.sc.us

a minor modification to the scope of the project to install CAT 5e type cable instead. The District's E-rate Manager was not made aware of the minor modification to the scope of the project until after the invoices for this project had been paid and prior to the last date to invoice for reimbursement. It should be noted that the installation of the cabling and jacks was completed prior to the deadline established for these funding commitments, i.e. September 30, 2008 (See Exhibit B).

BCSD has in place a set of internal procedures related to the review and payment of invoices. In part, these procedures call for invoices involving potential E-rate reimbursement be forwarded to the E-rate Manager only after they have been paid, to avoid the possibility of requesting reimbursement prior to the payment of invoices. Due to these internal procedures of the District (which were audited by KPMG in 2008 and found to be in compliance with examined rules and regulations), the E-rate Manager was unaware that a Service Substitution Request was needed for this project until after USAC's installation deadline had passed. This procedural deadline creates a situation in which it is sometimes impossible for conscientious applicants, in this case BCSD, to submit a Service Substitution Request until after the deadline lapses.

The District notes that once the invoice was received by the E-rate Manager, he worked with the service provider to obtain more detail about the materials delivered under the project to ensure that reimbursement was requested only for the portion of the project that was approved by the SLD. It was during this time that it was discovered that a service substitution was needed—after the procedural deadline to submit a Service Substitution Request. The District further notes, that it conducted all of these actions, including the submission of the requests for service substitution, substantially prior to the procedural deadline to submit the invoices for reimbursement.

### **III. Legal Basis for Waiver of the Rule**

The FCC has consistently ruled that strict adherence to technical procedural rules does not further the statutory goal of the E-rate program nor does it discourage waste, fraud or abuse. The Commission regularly grants the waiver of certain rules if good cause is shown. As the governing authority over the E-rate program, the FCC has the discretion to waive any provision of the rules where "special circumstances warrant a deviation from the general rule established in that order, and any such deviation would better serve the public interest than strict adherence to the general rule."<sup>1</sup> In the matter of *Federal-State Joint Board on Universal Service Order*, the FCC stated that the Commission may take into account considerations of "hardship, equity or more effective implementation of overall policy on an individual basis."<sup>2</sup>

In the above captioned matter, BCSD acted in good faith when it submitted the service substitution before the issuance of a BEAR form. The guidance proffered by USAC indicates that "if the applicant discovers that products or services delivered are different from those approved on the Form 471, the applicant should file a correcting Service Substitution even if the discovery

---

<sup>1</sup> FCC Order 96-45 at ¶ 5; See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990)

<sup>2</sup> FCC Order 96-45 at ¶ 5

occurs after the last day to receive service.”<sup>3</sup> As such, in accordance with prior rulings from the FCC and established USAC procedural rules, BCSD respectfully requests that the Commission grant this waiver, as adherence to the procedural rule is against public interest and there is no indication that the granting of this appeal would result in waste, fraud or abuse. “A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.”<sup>4</sup> In the above captioned matter, there is no evidence of waste, fraud or abuse or a failure to adhere to core program requirements.

**ADMINISTRATIVE ACTION REQUESTED**

Accordingly, BCSD respectfully requests that the Commission grant this appeal and direct USAC to issue guidance clarifying the policy on Service Substitution Requests.

Respectfully,



MICHAEL BRANDAU  
eRate Manager  
BEAUFORT COUNTY SCHOOL DISTRICT  
1300 King Street  
PO Drawer 309  
Beaufort, SC 29901-0309

Telephone: (843) 322-2340  
Facsimile: (843) 322-2424  
E-mail: Michael.Brandau@beaufort.k12.sc.us

---

<sup>3</sup> <http://www.universalservice.org/si/about/changes-corrections/service-substitutions/default.aspx>.

<sup>4</sup> See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990)

# Exhibit A



**ADMINISTRATOR'S DECISION ON SERVICE SUBSTITUTION REQUEST**

January 12, 2008

Michael Brandau  
Beaufort County School District  
P.O. Drawer 309  
Beaufort, SC 29901-0309

Form 471 Application Number: 507686

Dear Applicant,

This letter is your notification that the FCC Form 471, *Services Ordered and Certification Form* you submitted for **Minor Modifications** was received and is not approved. You are not authorized to make the changes identified in your submission.

FRN(s): 1401458

**Decision: Not Approved**

Your request is not approved for the following reason(s):

- The service substitution request was received or postmarked after the deadline for submitting requests – which is the **last day to receive service** for that FRN – i.e., June 30 of the relevant Funding Year for recurring services.

Please keep this letter for your records. This is the only notification you will receive indicating the processing of the above-submitted form.

If you have any questions regarding the above information, please write to us at "SLD, Box 902-  
Correspondence Unit, 100 South Jefferson Road, Whippany, NJ 07981."

**TO APPEAL THIS DECISION**

If you wish to appeal a decision in this letter, your appeal must be received by USAC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and (if available) email address for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Include the following to identify the letter and the decision you are appealing:
  - appellant name,
  - applicant or service provider name, if different than appellant,
  - applicant BEN and service provider SPIN.

- application or form number as assigned by the USAC
- Funding Request Number(s) (FRNs) you are appealing if provided in the letter;
- Name of letter and funding year – both are located at the top of the letter, and
- the exact text or the decision that you are appealing.

3. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal, including any correspondence and documentation.
4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
5. Provide an authorized signature on your letter of appeal.

To submit your appeal to USAC by email, email your appeal to [appeals@sl.universalservice.org](mailto:appeals@sl.universalservice.org). USAC will automatically reply to incoming emails to confirm receipt.

To submit your appeal to us by fax, fax your appeal to (973) 599-6542.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal  
 Schools and Libraries Division - Correspondence Unit  
 100 S. Jefferson Rd.  
 P. O. Box 902  
 Whippany, NJ 07981

For more information on submitting an appeal to USAC, please see the "Appeals Procedure" posted on our website.

You have the option of filing an appeal with USAC or directly with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted on our website. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.





**ADMINISTRATOR'S DECISION ON SERVICE SUBSTITUTION REQUEST**

January 12, 2008

Michael Brandau  
Beaufort County School District  
P.O. Drawer 309  
Beaufort, SC 29901-0309

Form 471 Application Number: 507686

**Dear Applicant,**

This letter is your notification that the FCC Form 471, *Services Ordered and Certification Form* you submitted for **Minor Modifications** was received and is not approved. You are not authorized to make the changes identified in your submission.

**FRN(s):** 1401474

**Decision:** Not Approved

Your request is not approved for the following reason(s):

- The service substitution request was received or postmarked after the deadline for submitting requests – which is the **last day to receive service** for that FRN – i.e., June 30 of the relevant Funding Year for recurring services.

Please keep this letter for your records. This is the only notification you will receive indicating the processing of the above-submitted form.

If you have any questions regarding the above information, please write to us at "SLD, Box 902- Correspondence Unit, 100 South Jefferson Road, Whippany, NJ 07981."

**TO APPEAL THIS DECISION**

If you wish to appeal a decision in this letter, your appeal must be received by USAC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and (if available) email address for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Include the following to identify the letter and the decision you are appealing:
  - appellant name,
  - applicant or service provider name, if different than appellant,
  - applicant BEN and service provider SPIN.

- application or form number as assigned by the USAC
- Funding Request Number(s) (FRNs) you are appealing if provided in the letter,
- Name of letter and funding year – both are located at the top of the letter, and
- the exact text of the decision that you are appealing.

3. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal, including any correspondence and documentation.
4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
5. Provide an authorized signature on your letter of appeal.

To submit your appeal to USAC by email, email your appeal to [appeals@sl.universalservice.org](mailto:appeals@sl.universalservice.org). USAC will automatically reply to incoming emails to confirm receipt.

To submit your appeal to us by fax, fax your appeal to (973) 599-6542.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal  
 Schools and Libraries Division - Correspondence Unit  
 100 S. Jefferson Rd.  
 P. O. Box 902  
 Whippany, NJ 07981

For more information on submitting an appeal to USAC, please see the "Appeals Procedure" posted on our website.

You have the option of filing an appeal with USAC or directly with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted on our website. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.



# Exhibit B

## Timeline of Events

Date (if available)	Event
Mid to late August, 2008	Project completed (cabling installed)
August 29, 2008	Invoice Date (issued by Service Provider)
September 9, 2008	Invoices Received by BCSD
	Invoices sent to Tech Services for review and approval
	Invoices reviewed and approved by Matt Weldy, Director of Systems Support, Technology Services
	Invoices sent to Facilities Planning and Construction for review and approval
	Project reviewed by Facilities Planning and Construction (Mary Gillies, Administrative Assistant)
September 17, 2008	Approved by Chris Poe, Executive Director of Facilities Planning and Construction
September 18, 2008	Approved by Walt Wheeler, Project Manager
September 25, 2008	Review of facilities and construction invoices for project account assignment by Louis Ackerman, Budget Analyst
<b>September 30, 2008</b>	<b>Installation Deadline established by SLD</b>
October 3, 2008	Invoices paid by Accounts Payable
October 6, 2008	Invoices received by Michael Brandau, E-rate Manager
October 8-20, 2008	E-rate Manager works with Service Provider to obtain detailed materials list
October 24, 2008	Service Substitutions submitted to SLD